IN THE HIGH COURT OF JUDICATURE AT BOMABY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.6252 OF 2005

Shri. Dattatraya T. Ghodke. ..Petitioner.

Vs.

Subhash Namdeo Walhekar. ..Respondent.

Mr. R.D. Matkari for the Petitioner.
Mr.S.P. Thorat for the Respondent.

CORAM: SMT.RANJANA DESAI,J.
DATED: 21.9.2005.

PC:

1. The present writ petition is filed challenging the order dated 25.8.2005 passed by the Joint Civil Judge, J.D. Nashik in R.C.S.No.119/2004. By the impugned order, the application made by the defendant for appointment of Court Commissioner for ascertaining the boundaries of the Plot Nos. 3 and 4 out of Survey No.31/2 situated at Nashik is rejected. The learned Judge has rejected the prayer for appointment of Court Commissioner on the ground that, it would amount to collecting evidence.

2. I heard the learned counsel for the parties. The learned counsel for the petitioner has drawn my attention to the judgment of this court in Kashinath Chindhuji Shastri Vs. Haribhau Nathuji Bawanthade 2004(2) Mh.L.J.722 and contended that the Trial Court

was wrong in rejecting the prayer for appointment of Court Commissioner. It appears that the plaintiff has alleged that the defendant has encroached upon his property. In such circumstances, in the light of judgment of this court referred to above, in my opinion, appointment of Court Commissioner would not amount to collecting the evidence if the Court Commissioner restricts himself only to carrying out the measurement. Hence, the following order.

ORDER

a) The impugned order dated 25.8.2005 is set aside.

b) Taluka Inspector of Land Records, Nashik is appointed as Court Commissioner to carry out the measurement of the suit property as per lay out plan and submit his report to the Trial Court within a period of two weeks from the date of receipt of this order by him. The expenses of the Court Commissioner would be borne by the defendant. After report is received by the Trial Court, the Trial Court shall decide the suit as expeditiously as possible.

c) T.I.L.R. shall give notice to both the parties and parties and their advocates shall remain present at the

time of measurement work.

d) Petition is disposed of accordingly.

(SMT. RANJANA DESAI, J.)